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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,060	03/10/2004	Alec Bobroff	HM-04-PT-03-NP	5665

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HAEMONETICS CORPORATION
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BRAINTREE, MA 02184-9114

EXAMINER	
HAND, MELANIE JO	
ART UNIT	PAPER NUMBER
3761	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/12/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

ED

Office Action Summary	Application No.	Applicant(s)	
	10/798,060	BOBROFF ET AL.	
	Examiner	Art Unit	
	Melanie J. Hand	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 December 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-13* is/are pending in the application.

4a) Of the above claim(s) *13* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 18, 2006 has been entered.

Response to Arguments

Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection.

With respect to applicant's arguments regarding the prior art of Inoue: Applicant argues that Inoue does not teach data that is procedure data. The data taught by Inoue is procedure data inasmuch as the data is blood-collected-amount data collected by the controller at various times (i.e. data points) throughout a fluid monitoring procedure. Applicant further argues that because the system of Inoue only collects one type of data, i.e. blood measured amount, and because the data taught by Inoue is calculated "yet-to-be collected amount", that the amendments to claim 1 overcome the rejection of claim 1. Applicant is reminded of the language of amended claim 1, specifically "a controller connected to the sensor and configured to receive current procedure data (blood collected amount) from the sensor, save the data to create historical procedure data (i.e. the blood collected amount now becomes historical data as it has already been read and saved), compare the current procedure data (i.e. the next data point received by the controller) to the historical procedure data (i.e. the saved previous data

point) and activate an alarm when predefined trends in the data are detected. Inoue teaches these structural features and thus the amendment to claim 1 does not overcome the rejection of claim 1.

Applicants' arguments with regard to the rejections of dependent claims 2-12 have been fully considered but are not persuasive as Applicants' arguments depend entirely on Applicants' arguments regarding the rejection of claim 1, which have been addressed *supra*.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-5, 7-9, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Inoue et al. (US 5,153,828).

In regard to Claims 1-5 and 7-9, Inoue et al. disclose a fluid monitoring and alert system 10 comprising a fluid collection device—having a drain tube 2, a vacuum reservoir 13, a suction pathway 41/others—vacuum pump (compressor) 17, sensors 40, 71, 73, a controller 18, an audible alarm 69, a visual display 12, and a valve 43 (whole document). The system records and displays data related to the system, including pressure data. The controller monitors the pressure and controls the valve so as to maintain a certain level of vacuum within the system (especially column 6, lines 13-27, column 7, lines 58-68).

In regard to Claim 11, it has been held that a recitation with respect to the manner in which a claimed invention is intended to be employed does not differentiate the claimed invention from a prior art satisfying the claimed structural limitations. *Ex parte Maham, 2 USPQ2d 1647 (1987). In re Paulsen, 30 F.3d 1475, 31 USPQ 2d 1671 (Fed. Cir. 1994).*

Therefore, the system is considered capable of being used in the manner claimed.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Inoue et al. In regard to Claim 12, Inoue et al. disclose that data, such as the amount of blood collected, is to be displayed on the visual display but do not expressly disclose the intervals at which this data is to be sampled or displayed. However, the interval at which the data is sample affects the accuracy of the information displayed to the user. As such, the interval at which data is collected and/or displayed to the user is considered to be a result effective variable. Thus, it would have been obvious to one of ordinary skill in the art to have the data display the volume of liquid collected in intervals of fifteen minutes, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).*

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Inoue et al. in view of Killian et al. (US 5,876,387).

In regard to Claims 6, Inoue et al. disclose the claimed invention but do not expressly disclose that the vacuum reservoir is joined to a facility-wide source of suction. Killian et al. discuss a suction system to be used in a medical facility comprising a vacuum chamber and pump. Killian et al. discuss that the system is connected to a central suction facility in case of failure of the vacuum pump (column 1, lines 39-64). One would have been motivated to modify the system of Inoue et al. to have the vacuum reservoir connected to a central suction facility, as taught by

Killian et al., since doing so would allow for a replacement source of suction in cause of failure of the vacuum pump. Thus, it would have been obvious to one of ordinary skill in the art to modify Killian et al. to have the vacuum reservoir connected to a facility-wide source of suction, as taught by Killian et al., since doing so would allow for a replacement source of suction in cause of failure of the vacuum pump.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Inoue et al. in view of Valerio et al. (US 5,989,234).

In regard to Claim 10, Inoue et al. disclose the claimed invention but do not expressly disclose that the system comprises an autotransfusion device. Valerio et al. disclose a system for draining and collecting fluid from a body cavity comprising a vacuum pump and chamber. Valerio et al. disclose that the device can be modified to serve as an autotransfusion device since reinfusing the patient's own blood is advantageous given today's concerns with communicable diseases (column 17, lines 22-29). (Also see Blankenship et al. US 5,116,312, column 1, lines 28-43). Thus, it would have been obvious to one of ordinary skill in the art to modify the system of Inoue et al. to comprise an autotransfusion device, as taught by Valerio et al., since doing so would provide the additional advantages of transfusion a patient with their own blood, or other bodily fluid.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand
Examiner
Art Unit 3761

March 28, 2007

K. M. Reichle

KARIN REICHLE
PATENT EXAMINER